IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5635 OF 2006

B.P.M. Industries Ltd. ...Petitioner
vs.
Samartha Development Corporation ...Respondent

Mr.Hiralal Thakkar, Senior Advocate i/b Mr.Babu Youhannans for the Petitioner
Mr.V.A.Thorat, Senior Advocate with Mr.Harinder Toor i/b M/s.Mahimtura & Co. for the respondent.

CORAM: A.S.OKA,J.
DATE : FEBRUARY 15,2007.

ORAL JUDGMENT:

1. The submissions of the learned Counsel for the parties were heard on the last date. By this Petition under Article 227 of Constitution of India, the Petitioner has challenged the order passed by the Appeal Bench of Small Causes Court, Mumbai by which an Application under section 10 of the Code of Civil Procedure,1908 (hereinafter referred to as the said Code) made by the Petitioner has been rejected.

2. The suit property is land admeasuring 3700 sq. yards equivalent to 3093.57 sq. meters at Dadar, Mumbai. The Petitioner (original defendant) is claiming to be a lessee of the said land. The Petitioner (original Defendant) is placing reliance on assignment in respect of the suit property dated 19th January 1954 executed by the Official Liquidator in favour of one Shamjibhai Harjiwandas. By a further deed of assignment, the said Shamjibhai transferred his rights as lessees in favour of the present petitioner. There was an

agreement executed on 31st August 1955 by and between the predecessors of the Respondent and the Petitioner. By the said agreement, an option was provided for renewal of lease for a period of 50 years. On 25th November 1993, the Respondent purchased the suit property.

3. On 8th February 1999 the Petitioner-Company sought renewal of the lease in terms of clause 5 of the original lease as modified. The original lease expired on 30th April 1999. On 9th June 1999, the Respondent declined to renew the lease and therefore the Petitioner-Company filed a suit No.5254 of 1999 in this Court inter alia for declaration that the original lease stood renewed with effect from 1st May 1999 for a period of 50 years as provided in the indenture of lease dated 6th May 1949. The second prayer in the suit is for decree of specific performance of the contract of renewal of lease. The Respondent filed a suit in the Small Causes Court at Mumbai claiming that by virtue of provisions under section 3(1) (b) of the Maharashtra Rent Control Act, 1999, the Petitioner-Company has no protection of the provisions of the said Act. The prayer in the suit is for eviction on the ground that the lease has come to an end by efflux of time. In the said suit filed by the Respondent, an interim notice was taken out by the Petitioner for stay of the said suit under section 10 of the said Code. The said notice was made absolute. Being aggrieved by the order passed on the said

notice, the Respondent preferred a revision Application which has been allowed by the order dated 5th April 2006. The Appeal Bench of Small Causes Court held that section 10 of the said Code has no application.

4. The prayer in this Petition is for quashing the said order dated 5th April 2006 and in the alternative, a prayer is made for transferring the suit pending in the Small Causes Court to this Court.

5. The learned Senior Counsel for the Petitioner submitted that the provision of section 10 of the said Code was squarely applicable to the facts of the present case. He submitted that the whole of the subject matter of both the suits was identical. He submitted that the fundamental test for applicability of section 10 is satisfied in the present case in as much as the final decision in the previous suit would certainly operate as res judicata in the subsequent suit. He submitted that if a decree for specific performance is granted, the decree in the said suit will operate as res judicata in the suit pending in the Small Causes Court. He placed reliance on the decision of the Apex court in case of National Institute of Mental Health & Neuro Sciences vs. C. Parameshwara [(2005) 2 S.C.C. page 256). Relying upon the said decision, he submitted that the whole of the subject matter in both the proceedings is identical and section 10 is

squarely attracted. The learned Senior Counsel for the Respondent placed reliance on the decision of the Single Judge of this Court dated 2nd August 2005 in Writ Petition No.6303 of 2004 in the case of FGP Ltd. Vs. Saleh Hooseini Doctor and another and submitted that the case is clearly covered by the decision.

6. I have considered the submissions. In so far as the prayer made in the alternative is concerned, the Petitioner-Company has a statutory remedy available of making an application under section 24 of the said Code for transfer of the suit pending in the Small Causes Court to this court. In view of availability of the said statutory remedy, writ jurisdiction under Article 227 of the Constitution of India cannot be exercised.

7. Turning to the main submission, it will be necessary to refer to section 10 of the said Code which reads thus :

"10. Stay of suit.- No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between the parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in (India)

established or continued by the (the Central Government) (***) and having like jurisdiction, or before (the Supreme Court). "

8. It must be borne in mind that the suit between a landlord and a tenant for ejection is exclusively triable by the court of Small Causes under the provisions of Presidency Small Causes Courts Act, 1882. In the present case, the contention of the Respondent is that the Petitioner company does not have protection of Maharashtra Rent Control Act,1999. Therefore, the case will be governed by the provisions of Transfer of Property Act,1882. By filing a suit in this Court, the Petitioner-Company has invoked the jurisdiction of this Court under Specific Relief Act, 1963 by praying for a decree of specific performance and declaration. It is, therefore, obvious that this court has no jurisdiction to grant relief which is claimed by the Respondent in the suit in the Small Causes Court as the said suit is triable exclusively by the court of Small Causes. Similarly, the relief which is claimed in the suit filed by the Petitioner in this Court cannot be obviously granted by the Court of Small Causes, as the said Court is a court of a limited jurisdiction. This Court exercises Ordinary original jurisdiction. The Small Causes Court has no jurisdiction to grant relief which is claimed in the suit filed in this Court and this Court cannot grant the relief claimed in the suit filed in the court of Small Causes.

Thus, essential condition incorporated under section 10 is obviously not satisfied in the present case.

9. Even going by the decision of the Apex Court in case of National Institute of Mental Health (supra), even if it is assumed that the whole of the subject matter of both the proceedings is identical, the condition provided in later part of section 10 is not at all satisfied. In the paragraph 8 of the said decision, the Apex Court has observed that object of section 10 is to prevent the courts of concurrent jurisdiction from simultaneously deciding two parallel suits between the same parties in respect of the same matter in issue. In the present case, suits are not pending in the two courts having concurrent jurisdiction. In fact, the jurisdiction vested in both the courts is totally different. Therefore, the view taken by the Appeal Bench of Small Causes Court is legal and proper and no interference is called for in a Petition under Article 227 of Constitution of India.

10. So far as the prayer made in the alternative is concerned, the Petitioner has a remedy open under the said Code.

11. Hence, prayer clause (a) of the Writ Petition is rejected. Liberty to take out appropriate application so far as prayer clause (b) is concerned. The Petition is rejected

with no order as to costs.

12. All contentions of the parties in the pending suits are expressly kept open.

JUDGE